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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOUGLAS TROESTER, on behalf of
himself, and all others similarly
situated,

Plaintiffs,

v.

STARBUCKS CORPORATION, a
Washington corporation; and DOES 1-
50, inclusive,

Defendants.

Case No. 2:12-cv-07677-GAF-PJW

**DEFENDANT STARBUCKS
CORPORATION'S RESPONSES TO
EVIDENTIARY OBJECTIONS IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

[Reply Memorandum, Reply Separate
Statement, Evidentiary Objections, and
Supplemental Declaration of Jonathan P.
Slowik filed concurrently]

Date: March 10, 2014
Time: 9:30 a.m.
Crtrm: 740

Judge: Hon. Gary A. Feess

Date Action Filed: August 6, 2012

**STARBUCKS CORPORATION'S RESPONSES
TO EVIDENTIARY OBJECTIONS**

Separate Statement Paragraph 3: Prejudicial and confusing (FRE 403), improper evidence to prove the content of a writings(s) [*sic*], inadmissible hearsay (FRE 802), not based on personal knowledge (FRE 602), and improper lay opinion testimony (FRE 701).

Starbucks Response: Troester's understanding of Starbucks policy is clearly a subject about which he has personal knowledge, and is not opinion testimony. Troester's FRE 403 objection is misplaced, because the evidence is neither prejudicial nor confusing, and FRE 403 is intended to keep inflammatory evidence from the jury, not the judge on a motion for summary judgment. *See Brimberry v. Northwestern Mut. Life Ins. Co.*, No. CV 13-00127 RSWL, 2013 WL 4677592, at *3 (C.D. Cal. Aug. 28, 2013) ("In the summary judgment context, a court need not exclude evidence for danger of unfair prejudice [or] confusion of issues"). Troester's best evidence and hearsay objections are boilerplate and frivolous. *See* Scheduling and Case Management Order at 7 ("Boilerplate objections . . . will be disregarded and overruled.") (emphasis removed).

Separate Statement Paragraph 4: Prejudicial and confusing (FRE 403), improper evidence to prove the content of a writings(s) [*sic*], inadmissible hearsay (FRE 802), not based on personal knowledge (FRE 602), and improper lay opinion testimony (FRE 701).

Starbucks Response: Troester's understanding of Starbucks policy is clearly a subject about which he has personal knowledge, and is not opinion testimony. Troester's FRE 403 objection is misplaced, because the evidence is neither prejudicial nor confusing, and FRE 403 is intended to keep inflammatory evidence from the jury, not the judge on a motion for summary judgment. *See Brimberry*, 2013 WL 4677592, at *3 ("In the summary judgment context, a court need not exclude evidence for danger of

1 unfair prejudice [or] confusion of issues”). Troester’s best evidence and hearsay
 2 objections are boilerplate and frivolous. *See* Scheduling and Case Management Order at
 3 7 (“Boilerplate objections . . . will be disregarded and overruled.”) (emphasis removed).

4
 5 Separate Statement Paragraph 5: Prejudicial and confusing (FRE 403), improper
 6 evidence to prove the content of a writing(s), inadmissible hearsay (FRE 802), not based
 7 on personal knowledge (FRE 602), and improper lay opinion testimony (FRE 701).

8 Starbucks Response: Troester’s understanding of his job responsibilities is
 9 clearly a subject about which he has personal knowledge, and is not opinion testimony.
 10 Troester’s FRE 403 objection is misplaced, because the evidence is neither prejudicial
 11 nor confusing, and FRE 403 is intended to keep inflammatory evidence from the jury,
 12 not the judge on a motion for summary judgment. *See Brimberry*, 2013 WL 4677592, at
 13 *3 (“In the summary judgment context, a court need not exclude evidence for danger of
 14 unfair prejudice [or] confusion of issues”). Troester’s best evidence and hearsay
 15 objections are boilerplate and frivolous. *See* Scheduling and Case Management Order at
 16 7 (“Boilerplate objections . . . will be disregarded and overruled.”) (emphasis removed).

17
 18 Separate Statement Paragraph 7: Prejudicial and confusing (FRE 403), improper
 19 evidence to prove the content of a writings(s) [*sic*], inadmissible hearsay (FRE 802), not
 20 based on personal knowledge (FRE 602), and improper lay opinion testimony (FRE
 21 701).

22 Starbucks Response: Troester’s understanding of his job responsibilities is
 23 clearly a subject about which he has personal knowledge, and is not opinion testimony.
 24 Troester’s FRE 403 objection is misplaced, because the evidence is neither prejudicial
 25 nor confusing, and FRE 403 is intended to keep inflammatory evidence from the jury,
 26 not the judge on a motion for summary judgment. *See Brimberry*, 2013 WL 4677592, at
 27 *3 (“In the summary judgment context, a court need not exclude evidence for danger of
 28

1 unfair prejudice [or] confusion of issues”). Troester’s best evidence and hearsay
 2 objections are boilerplate and frivolous. *See* Scheduling and Case Management Order at
 3 7 (“Boilerplate objections . . . will be disregarded and overruled.”) (emphasis removed).

4
 5 Separate Statement Paragraph 14: Prejudicial and confusing (FRE 403), improper
 6 evidence to prove the content of a writing(s), inadmissible hearsay (FRE 802), and
 7 improper lay opinion testimony (FRE 701).

8 Starbucks Response: Troester testified that he performed the store close process,
 9 so the steps that the process entailed is clearly a subject about which he has personal
 10 knowledge, and is not opinion testimony. *See* UF No. 13. Troester’s FRE 403 objection
 11 is misplaced, because the evidence is neither prejudicial nor confusing, and FRE 403 is
 12 intended to keep inflammatory evidence from the jury, not the judge on a motion for
 13 summary judgment. *See Brimberry*, 2013 WL 4677592, at *3 (“In the summary
 14 judgment context, a court need not exclude evidence for danger of unfair prejudice [or]
 15 confusion of issues”). Troester’s best evidence and hearsay objections are boilerplate
 16 and frivolous. *See* Scheduling and Case Management Order at 7 (“Boilerplate
 17 objections . . . will be disregarded and overruled.”) (emphasis removed).

18
 19 Separate Statement Paragraph 33: Irrelevant (FRE 401-402), prejudicial and
 20 confusing (FRE 403), improper evidence to prove the content of a writings(s), and
 21 inadmissible hearsay (FRE 802).

22 Starbucks Response: Troester’s recollection about whether a manager instructed
 23 him to wait with co-workers is relevant, because if Troester chose to wait with co-
 24 workers for their rides, without any prompting from Starbucks, it is not compensable
 25 time. It is not hearsay, because Troester’s recollection does not include any out-of-court
 26 statements. Troester’s FRE 403 objection is misplaced, because the evidence is neither
 27 prejudicial nor confusing, and FRE 403 is intended to keep inflammatory evidence from
 28

1 the jury, not the judge on a motion for summary judgment. *See Brimberry*, 2013 WL
 2 4677592, at *3 (“In the summary judgment context, a court need not exclude evidence
 3 for danger of unfair prejudice [or] confusion of issues”). Finally, Troester’s best
 4 evidence objection is boilerplate and frivolous. *See Scheduling and Case Management*
 5 *Order* at 7 (“Boilerplate objections . . . will be disregarded and overruled.”) (emphasis
 6 removed).

7
 8 Separate Statement Paragraph 34: Irrelevant (FRE 401-402), prejudicial and
 9 confusing (FRE 403), improper evidence to prove the content of a writings(s),
 10 inadmissible hearsay (FRE 802), and not based on personal knowledge (FRE 602).

11 Starbucks Response: Troester’s managers clearly have personal knowledge about
 12 whether they asked him to wait with co-workers for their rides. This evidence is also
 13 relevant, because if Troester chose to wait with co-workers for their rides, without any
 14 prompting from Starbucks, it is not compensable time. It is not hearsay, because this
 15 evidence does not include any out-of-court statements. Troester’s FRE 403 objection is
 16 misplaced, because the evidence is neither prejudicial nor confusing, and FRE 403 is
 17 intended to keep inflammatory evidence from the jury, not the judge on a motion for
 18 summary judgment. *See Brimberry*, 2013 WL 4677592, at *3 (“In the summary
 19 judgment context, a court need not exclude evidence for danger of unfair prejudice [or]
 20 confusion of issues”). Finally, Troester’s best evidence objection is boilerplate and
 21 frivolous. *See Scheduling and Case Management Order* at 7 (“Boilerplate objections
 22 . . . will be disregarded and overruled.”) (emphasis removed).

23
 24 Separate Statement Paragraph 35: Irrelevant (FRE 401-402), prejudicial and
 25 confusing (FRE 403), improper evidence to prove the content of a writings(s), and
 26 inadmissible hearsay (FRE 802).

1 Starbucks Response: Evidence about Troester's state of mind is relevant, because
 2 if Troester chose to wait with co-workers for their rides, without any prompting from
 3 Starbucks, it is not compensable time. Troester's FRE 403 objection is misplaced,
 4 because the evidence is neither prejudicial nor confusing, and FRE 403 is intended to
 5 keep inflammatory evidence from the jury, not the judge on a motion for summary
 6 judgment. *See Brimberry*, 2013 WL 4677592, at *3 ("In the summary judgment
 7 context, a court need not exclude evidence for danger of unfair prejudice [or] confusion
 8 of issues"). Finally, Troester's hearsay and best evidence objections are boilerplate and
 9 frivolous. *See Scheduling and Case Management Order* at 7 ("Boilerplate objections
 10 . . . will be disregarded and overruled.") (emphasis removed).

11
 12 Separate Statement Paragraph 47: Prejudicial and confusing (FRE 403), improper
 13 evidence to prove the content of a writings(s), inadmissible hearsay (FRE 802), and
 14 improper lay opinion testimony (FRE 701).

15 Starbucks Response: Troester's testimony about why he is suing Starbucks is not
 16 an improper lay opinion. His FRE 403 objection is misplaced, because the evidence is
 17 neither prejudicial nor confusing, and FRE 403 is intended to keep inflammatory
 18 evidence from the jury, not the judge on a motion for summary judgment. *See*
 19 *Brimberry*, 2013 WL 4677592, at *3 ("In the summary judgment context, a court need
 20 not exclude evidence for danger of unfair prejudice [or] confusion of issues"). Finally,
 21 Troester's hearsay and best evidence objections are boilerplate and frivolous. *See*
 22 *Scheduling and Case Management Order* at 7 ("Boilerplate objections . . . will be
 23 disregarded and overruled.") (emphasis removed).

24 Dated: February 24, 2014

AKIN GUMP STRAUSS HAUER & FELD LLP
 Gregory W. Knopp
 Mark R. Curiel
 Jonathan P. Slowik

By /s/ Gregory W. Knopp
 Gregory W. Knopp
 Attorneys for Defendant Starbucks Corporation